

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS NOS.3701 of 1999 to 3709 of 1999  
with  
First Appeals Nos.3711 of 1999 to 3734 of 1999  
with  
First Appeals Nos.3742 of 1999 to 3758 of 1999  
with  
Civil Applications Nos. 7033 of 1999 to 7056 of 1999;  
and 7076 of 1999 to 7091 of 1999 [for stay]

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI  
and  
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
EXECUTIVE ENGINEER

Versus

GHANSHYAMBHAI CHHAGANBHAI  
-----

Appearance:

MS SEJAL K MANDAVIA for appellant No.1  
Mr. V.M.Pancholi, AGP, for appellant No.2 in FA  
Nos. 3711 of 1999 to 3734 of 1999 and C.A. nos. 7033 of  
1999 to 7056 of 1999  
Ms. Hansa Punani, AGP, for appellant no.2 in FA  
Nos.3701 of 1999 to 3709 of 1999 and 3742 of 1999 to 3758  
of 1999 and CA Nos.7076 of 1999 to 7091 of 1999.  
MR AJ PATEL for the respondents.

-----

CORAM : MR.JUSTICE M.H.KADRI  
and  
MR.JUSTICE D.P.BUCH

Date of decision: 18/08/2000

C.A.V. JUDGMENT : (Per: Kadri, J.)

1. Executive Engineer, Narmada Project, Saurashtra Branch and Special Land Acquisition Officer, Narmada Project II, have filed the abovenumbered appeals under Section 54 of the Land Acquisition Act, 1894 ( to be referred to as 'Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated December 9, 1998, passed by learned Special Judge (LAR) and 3rd Extra Assistant Judge, Ahmedabad (Rural), at Mirzapur, determining market value of acquired lands of village Thori Mubarak, Taluka Viramgam, District Ahmedabad, as on September 19, 1991 and October 3, 1991, at the rate of Rs.19.40 per sq.mtr and awarding additional compensation of acquired lands of the said village at the rate of Rs.17/- per sq.mtr. First Appeals Nos.3701 to 3709 of 1999 are arising out of Land Acquisition Cases Nos. 1956 of 1996 to 1964 of 1996, First Appeals Nos.3711 of 1999 to 3734 of 1999 are arising out of Land Acquisition Cases Nos. 1682 of 1996 to 1689 of 1996, 1691 of 1996 to 1695 of 1996 and 1945 of 1996 to 1955 of 1996, and First Appeals Nos.3742 of 1999 to 3758 of 1999 are arising out of Land Acquisition Cases Nos.226 of 1994 to 242 of 1994. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. The Executive Engineer, Saurashtra Branch Canal Division No.1, Kadi, sent a proposal to acquire agricultural lands of village Thori Mubarak, Taluka Viramgam, District Ahmedabad, for the purpose of construction of Saurashtra Branch Canal of Sardar Sarovar Corporation Limited. The said proposal was scrutinized by the State Government and preliminary notifications under Section 4(1) of the Act were published in the government gazette on September 19, 1991 and October 3, 1991. After following usual procedure under Section 5 of the Act, declaration under Section 6 of the Act was made which was published in the government gazette on February 27, 1992. After serving notice under Section 9 of the Act to the land owners, the Land Acquisition Officer, on the basis of materials placed before him, made his award

on April 29, 1993 by offering compensation of acquired lands of village Thori Mubarak at the rate of Rs.2.40 ps per sq.mtr. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate and, hence, they filed written applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court, Ahmedabad (Rural), for determination of market value of acquired lands. Accordingly. said applications were referred to the District Court, Ahmedabad (Rural), where it came to be numbered as Land Acquisition Case Nos. 1956 of 1996 to 1964 of 1996; 1682 of 1996 to 1689 of 1996, 1691 of 1996 to 1695 of 1996, 1945 of 1996 to 1955 of 1996; and 226 of 1994 to 242 of 1994. Before the Reference Court, the claimants had claimed compensation of their acquired lands at the rate of Rs.30 per sq.mtr.

3. To substantiate their claim for enhanced compensation, the claimants examined Popatbhai Gordhanbhai, claimant of Land Acquisition Case No.1961 of 1996. at Exh.20; (2) Ishwarbhai Shivabhai, claimant of Land Acquisition Case No.1951 of 1996 at Exh.19; (3) Manjibhai Gordhanbhai, claimant of Land Acquisition Case No.237 of 1994 at Exh.20. The claimants' witnesses, during their deposition, produced certified copy of previous award at Exh.18 in respect of acquired lands of village Hansalpur, in respect of which notification under Section 4(1) of the Act was published in the government gazette on December 17, 1990.

4. The appellants did not lead oral evidence but produced documentary evidence consisting of statement showing information regarding facilities available to village Thori Mubarak at Exh.22, xerox copy of Anavari Report at Exh.23, xerox copy of index at Exh.24, map of Thori Mubarak at Exh.26, etc. The Reference Court, for determination of market value of present acquired lands of village Thori Mubarak placed reliance on previous award Exh.18 rendered in Land Acquisition Case No.1855 of 1996 and allied matters, which was in respect of acquired lands of village Hansalpur. Notification under Section 4(1) of the Act in respect of acquired lands of village Hansalpur was published in the government gazette on December 17, 1990 and the Reference Court had determined market value of the said lands of village Hansalpur at the rate of Rs.26 per sq.mtr. The Reference Court deduced that it was not brought to its notice that the previous award Exh.18 of village Hansalpur was challenged in higher forum either by State of Gujarat or acquiring body or claimants. The Reference Court, therefore,

deduced that previous award in respect of acquired lands of village Hansalpur had become final. The Reference Court has further deduced that the claimants' oral and documentary evidence had proved that villages Hansalpur and Thori Mubarak were adjoining to each other and agricultural lands of both villages were identical in all respects wherein crop pattern was also the same. The Reference Court further deduced that the Land Acquisition Officer in his award with respect to acquired lands of village Hansalpur had offered market price at the rate of Rs.5.70 ps per sq.mtr as on December 17, 1990, whereas the Land Acquisition Officer had offered compensation of acquired lands of village Thori Mubarak as on September 19, 1991, and October 3, 1991 at the rate of Rs.2.40 ps per sq.mtrs. The Reference Court further deduced that the present lands of village Thori Mubarak was somehow inferior in quality. In view of the abovestated set of circumstances, the Reference Court determined market value of the present acquired lands of village Thori Mubarak at the rate of Rs.19.40 ps per sq.mtr and awarded Rs.17 per sq.mtr as additional compensation to the respondents, which has been challenged by Acquiring Body and State of Gujarat by filing these three groups of First Appeals.

5. Learned counsel, Ms. Sejal Mandaviya appearing for appellant No.1, learned AGP, Mr. V.M.Pancholi for appellant No.2, have taken us through the entire record and proceedings of the Reference Court.

6. Learned counsel for the appellants submitted that the award of the Reference Court was excessive and the claimants had not produced reliable evidence for the determination of market value of the acquired lands. Learned counsel for the appellants further submitted that lands of village Thori Mubarak were far away from the lands of village Hansalpur and fertility of both the lands was also not the same and, therefore, the Reference Court had erred in placing reliance on the previous award of village Hansalpur for determination of market value of present acquired lands. Learned counsel for the appellants further submitted that the respondents had led no evidence in support of their claim that lands of both villages were having same fertility and agriculturists were cultivating their lands at the same crop pattern and, therefore, previous award of village Hansalpur was not relevant and comparable for determination of market value of present acquired lands. Learned counsel for the appellants, therefore, submitted that the award of the Reference Court being excessive, these appeals deserve to be allowed with costs.

7. Learned counsel for the respondents-claimants, Mr. A.J. Patel, on the other hand, has supported the award passed by the Reference Court, and has submitted that the claimants had led sufficient evidence in respect of their acquired lands of village Thori Mubarak and had further led oral evidence to show comparison of lands of both villages Thori Mubarak and Hansalpur. Learned counsel for the respondents submitted that lands of both villages were in all respects comparable in fertility and situation and, therefore, the Reference Court had committed no error in placing reliance on the previous award in respect of acquired lands of village Hansalpur. Learned counsel for the respondents submitted that the Land Acquisition Officer, in his award, Exh.5, had described situation and facilities available to village Thori Mubarak and had mentioned that the said village was at a distance of 1 km from Highway of Ahmedabad-Surendranagar and the village was connected by road with all the towns of Gujarat State. All the acquired lands were at the distance of 1-2 kms from Gamtel of the village. Village Thori Mubarak was having facilities of electricity, telephone, hospital, primary school, Kinder Garden, and sub-post office, etc. and there were facilities of 15 tube wells, by which, all the acquired lands were getting facility of irrigation. It was also mentioned that, in the adjoining village Hansalpur, many industrial concerns and factories had come up. Learned counsel further submitted that the award of the Land Acquisition Officer is not an evidence in the eye of law, but, for doing substantial justice to the claimants, the Court can place reliance on the material collected by the Land Acquisition Officer, which has been mentioned in his award. Learned counsel for the respondents submitted that a just, reasonable and adequate compensation was awarded by the Reference Court and, therefore, these appeals deserve to be dismissed with costs.

8. Oral evidence of claimants' witnesses indicates that village Thori Mubarak was situated near Ahmedabad-Surendranagar Highway and the village was having facilities of water supply, telephone, electricity, post office, cooperative societies of milk producers, housing societies, ginning factory, kinder garden, primary school, and high school. The claimants also claimed that daily 25 S.T. buses were coming to the village. The witness also deposed that Narmada main canal was passing at a distance of 1 km from the village and village Hansalpur was situated just adjoining to the village Thori Mubarak, and boundaries of both villages

were touching each other. It was claimed that Narmada canal was passing through both villages and agricultural lands of both villages were having same fertility. The witnesses claimed that all acquired lands were irrigated lands as they were getting water supply through 15 tube-wells and through main canal. The evidence of claimants' witnesses also indicates that the agriculturists were raising two crops in a year and agricultural produces of cotton, wheat, jeera, bajri, etc. were raised and the agriculturists were getting net income of Rs.10,000/- per bigha per annum. All the witnesses were, searchingly, cross examined by the advocates for the appellants, but no material was brought out during their cross examination to dislodge their evidence in their examination in chief. Thus, the evidence of claimants' witnesses indicates that agricultural lands of both villages were having same advantageous features and the previous award of village Hansalpur was, in all respects, relevant and comparable for the purpose of determination of market value of present acquired lands of village Thori Mubarak.

9. It may be stated that the previous award produced by the claimants was challenged in the High Court by filing First Appeals Nos.2156 of 1999 to 2184 of 1999. Division Bench of this Court (Coram: M.R. Calla & R.P. Dholakiya, JJ.) by judgment and order dated May 7, 1999, had summarily dismissed the said first appeals and confirmed determination of market value of acquired lands of village Hansalpur at the rate of Rs.26/- per sq.mtr as on December 17, 1999. Learned counsel for the acquiring body, Ms. Sejal Mandaviya, however, has produced on record copy of order of Supreme Court in Special Leave Petitions Nos.17655 of 1999 to 17733 of 1999, wherein, the Supreme Court, while issuing notice to the respondents-claimants, has stayed judgment and order of the High Court and directed the appellants not to deposit amount of compensation in excess of Rs.15/- per sq.mtr. Learned counsel for the appellants, therefore, submitted that market value of present acquired lands cannot be determined in excess of Rs.15/- per sq.mtr., in view of the order of the Supreme Court in Special Leave Petitions Nos. 17655 of 1999 to 17733 of 1999. We are of the opinion that still the matters are not finally disposed of by the Supreme Court, and, while issuing notice, the Supreme Court had only passed interim order of staying operation of judgment and order of the High Court by directing the appellant not to deposit amount of compensation in excess of Rs.15 per sq.mtr. In no case, it can be said to be final determination of market value of acquired lands of village Hansalpur. It may be stated

that previous award of Hansalpur related to determination of market value at the rate of Rs.26 per sq.mtr as on December 17, 1990 whereas the present acquired lands were placed under acquisition by notification under Section 4(1) of the Act dated September 19, 1991. Even though lands of villages Hansalpur and Thori Mubarak were, in all respects, identical in fertility and having same advantageous features, the Reference Court had determined market value at only Rs.19.40 per sq.mtr for acquired lands of village Thori Mubarak, whereas in the previous award, the Reference Court had determined market value of village Hansalpur at Rs.26 per sq.mtr. Therefore, by no stretch of imagination, it can be said that determination of market value of present acquired lands of village Thori Mubarak is on higher side. It is an admitted fact that lands of both villages, in all respects, were identical, yet the Reference Court had not awarded uniform rate of compensation and had determined market value of acquired lands of village Thori Mubarak on the lower side i.e. at the rate of Rs.19.40 per sq.mtr only. If the sale deeds were not available in near proximity of time to Section 4(1) notification, in our opinion, the main function of the Court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of Section 23 of the Act is to see that the affected person in an acquisition is placed in the same position as far as possible as he would have been, had there been no acquisition. So, the ultimate purpose and policy enshrined in Section 23 of the Act is to see that the affected person or owner of the property acquired should get fair and just amount of compensation (See: 1992 (1) G.L.H.417). The claimants had led sufficient evidence with regard to lands of previous award and the present acquired lands and the reference Court had committed no error in placing reliance on previous award rendered in Land Reference Case Nos. 1855 of 1996 and allied matters, wherein, market value of lands of village Hansalpur as on December 17, 1990 was determined at the rate of Rs.26 per sq.mtr.

10. Considering all the aspects as stated above, in our view, the Reference Court has committed no error in determination of market value of acquired lands of village Thori Mubarak as on September 19, 1991 and October 3, 1991 at the rate of Rs.19.40 ps per sq.mtr. however, rounded off the figure of Rs.19.40 to Rs.19.00 per sq.mtr. minus awarded by the Land Acquisition Officer. The statutory benefits extended in favour of the claimants on the amount of compensation are eminently just and proper and, therefore, do not call for any interference. However, we make it clear that the

respondents-claimants shall not be entitled to solatium under Section 23(1-A) and interest on the amount of solatium as per the decision of the Supreme Court in the case of Premnath Kapur and another vs. National Fertilizer Corporation of India Limited and others, reported in (1996) 2 Supreme Court Cases page 71.

11. As a result of the foregoing discussion, we partly allow these appeals by determining market value of the acquired lands of village Thori Mubarak at the rate of Rs.19.00 per sq.mtr as on September 19, 1991. The common judgment and award of the Reference Court shall stand modified accordingly. There shall be no order as to costs.

12 In view of the order passed in First Appeals, Civil Applications Nos. 7033 of 1999 to 7056 of 1999 and 7076 of 1999 to 7091 of 1999 for stay do not survive and are disposed of accordingly with no order as to costs.

(M.H.Kadri, J.)

(D.P.Buch, J.)

\*\*\*\*

(swamy)